

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF  
DELAWARE, IN AND FOR NEW CASTLE COUNTY**

**COURT NO. 13**

ELIZABETH ADORNO

\*

Plaintiff Below,

Appellant.

\*

Vs.

\*

C.A. No. JP13-18-005153

YAHAIIRA PEREZ

\*

Defendant Below,

Appellee.

\*

**Trial de Novo.**

**APPEARANCES:**

Both parties were self-represented.

Sean P. McCormick, Deputy Chief Magistrate.

Emily Ferrell, Justice of the Peace.

Marie E. Page, Justice of the Peace.

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF  
DELAWARE, IN AND FOR NEW CASTLE COUNTY**

**COURT NO. 13**

**CIVIL ACTION NO: JP13-18-005153**

**ELIZABETH ADORNO V. YAHAIIRA PEREZ**

**ORDER ON TRIAL DE NOVO**

The Court has entered a judgment or order in the following form:

**Procedural Posture of the Case at Bar.**

This matter was originally filed on or about the 2<sup>nd</sup> of May instant, with the Plaintiff, alleging that two months' rent (at \$1500/month) was due as well as associated late fees and a water bill in the amount of \$3,208. Accordingly, she sought the rental and utility debt as well as possession of the unit in question. A hearing was held in June 2<sup>nd</sup> of this year; the services of an interpreter were employed to assist the Defendant. Judgment in the matter was reserved and not issued until June 11<sup>th</sup>. It should be noted that possession was no longer at issue at the time of the hearing before the Magistrate below. Although the judgment favored the Plaintiff, it awarded only a portion of what she had sought. As such, Plaintiff appealed. A three-judge panel consisting of Deputy Chief Magistrate McCormick and Judges Ferrell and Page was convened to consider the matter further. Having done so, and based upon the rationale that follows, judgement is awarded in Plaintiff's favor fully in all elements of her claim.

**Facts**

The panel found the following facts pertinent to its decision. The unit in question consisted of several segments; a portion of it was employed by the Defendant as a business (a hair salon); there was also an apartment on the second floor and a studio apartment in the basement, both of which the Defendant sub-let. Although the parties had signed a residential lease in 2014 for the purpose of reducing to writing the bases of their agreement, it was very clear (and in fact, not disputed by either party) that the rental was commercial in nature. At no time did the Defendant ever reside in the property. During the

course of the tenancy, the Plaintiff resided in Harrisburg, PA. Rent was paid by the Defendant to the Plaintiff by means of direct deposit into the Plaintiff's bank account. Although it was disputed by the Defendant that it was her exclusive responsibility to make repairs, she agreed that on the several occasions when repairs were necessary she had agreed to make them and then deduct their expense from the rent, thereby tacitly acknowledging Plaintiff's status as a long-distance landlord. In the spring of 2018 the Plaintiff decided to relocate to Wilmington. At that time, she advised the Defendant of her intentions, and the Defendant confirmed that she would vacate the unit by April 1<sup>st</sup>. Unfortunately, due to a delay in her ability to move her business to its new location (the previous tenant was tardy in moving their property), the Defendant retained possession of the unit at issue in this matter until April 30<sup>th</sup>. The Defendant claimed that she had paid rent in cash to the Plaintiff for the month of March 2018 but never asked for a receipt. Plaintiff disagreed vociferously to this assertion. The Defendant admitted that April's rent was due. The lease, which allowed for late fees at the rate of \$75 per month, was evidenced by the Plaintiff.

As to the water bill, the Plaintiff produced for the Court a copy of a City of Wilmington-issued water bill totaling \$3,175.65. A ledger accompanying the bill showed that no payments had been made since November of 2016. The Plaintiff contended that the Defendant was well-aware of the need to pay the water bill; her previous non-payment had been the basis for a prior Landlord-Tenant filing in 2016 that was settled when the Defendant paid the bill in full. Plaintiff agreed that she should have paid more attention after the 2016 incident, but thought that the issue was resolved and that the Defendant was on notice of the need to pay the bill quarterly. The Defendant claimed that she stopped paying the water bill because there were leaky pipes in the unit which rendered usage as excessive. The Plaintiff knew of the situation but failed to make repairs. The Defendant contended that she should not have been expected to make such a potentially costly repair.

### **Discussion**

Although a residential lease was utilized to memorialize the parties' agreement to lease the premises, it was clear and unrefuted that the agreement was commercial in nature. With the exception of Chapter 57 of Title 25 (which provides for a means by which a commercial dispute could be brought before the Court) the balance of the Residential Landlord-Tenant Code is not applicable to this instant matter. Rather, Chapter 61 of Title 25 (regarding "Commercial Leases") is governing. 25 Del. Code § 6102(6) states that "rental agreement shall mean and include all agreements, written or oral, which

establish or modify the terms, conditions, rules, regulations, or other provisions concerning the use and occupancy of a rental unit.” In this instant matter, it is clear that while some terms of the agreement were not clearly expressed within the written lease, the terms were later established by the conduct of the parties. The parties agreed on several instances that when repairs needed to be made, the Defendant made the repairs and deducted the expense from the rent. This repeated course of conduct nullifies the Defendant’s claim that she should not have been responsible for the plumbing repairs which she claimed were the source of the excessive water bill. Had the Defendant made the repairs, she could have deducted their value from the rent as before while at the same time saved herself the cost of the higher water bills in the future. Clearly the accumulated water bills are from a time during which the Defendant was in exclusive control of the unit; accordingly, their expense is hers to bear.

The continued conduct of the parties also comes to focus when considering the question of whether March rent is due or was paid. As was established, rent was normally paid by direct deposit to the Plaintiff’s bank account. If the Defendant engaged in a different course of conduct (paying in cash) than that which the parties were accustomed, then the Defendant bears the burden of establishing by a preponderance of the evidence that the event took place, and that the payment was made. In this matter she is unable to do so. Rent for the months of March and April are due, as are the associated late fees.

#### **Conclusion**

Based upon the foregoing rationale, Judgment is awarded in favor of the Plaintiff and against the Defendant in the amount of \$6,325.65 plus the cost of filing and post-judgment interest on the debt.

**IT IS SO ORDERED THIS 7<sup>th</sup> OF AUGUST, A.D. 2018.**



Deputy Chief Magistrate  
For the Three Judge Panel.